



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
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JAN COOK, ASSOCIATE COMMISSIONER
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WALTER L. THOMAS, JR.
SECRETARY

IN RE:

DOCKET 28590

**PROPOSED REVISIONS TO THE PRICE
REGULATION AND LOCAL
COMPETITION PLAN**

ORDER ON MOTION FOR CLARIFICATION AND/OR RECONSIDERATION

BY THE COMMISSION:

I. Introduction and Background

On January 26, 2005, the Alabama Incumbent Local Exchange Carriers identified in Appendix A attached hereto (hereinafter known as the "ILECs"), filed a Motion for Clarification and/or Reconsideration (the "ILEC Motion") regarding certain portions of the Commission's December 27, 2004 Order creating the Alabama Telecommunications Regulation Plan (the "ATRP" or the "plan"). The ILECs amended their motion on July 1, 2005, to reference passage of the Alabama Communications Reform Act of 2005 (the "Reform Act"). In addition to the passage of the Reform Act, the ILECs noted that two new applications had been filed by carriers seeking eligible telecommunications status in rural areas in Alabama, and that a new broadband satellite service is now being marketed toward rural customers. The petitioning ILECs encouraged the Commission to amend the ILEC Price Flexibility Plan (the "Price Flexibility Plan") included within the ATRP to take into account these changes, resolve ambiguities, and to thus provide small rural ILECs with a viable alternative to the detariffing and deregulatory provisions of the Reform Act.

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On July 15, 2005, the Attorney General of Alabama (the "AG") filed a request that the ILEC Motion be deferred to allow the Commission staff, the AG and other interested parties the opportunity to further study the issues involved. As a result, the Motion was not considered at the July 19, 2005 meeting of the Commission. The AG filed a second request for deferral of the issues presented by the ILECs on or about August 1, 2005. No other filings have been received by the Commission in response to the ILECs' Motion

II. Findings and Conclusions

Following extensive study by the Commission staff and staff negotiation with the ILECs and the AG, the Commission renders the following findings regarding to the ILEC Motion:

1. **Time Period Calculations.**

(a) Section 7.B. (4) of the Price Flexibility Plan provides graduated pricing flexibility based on the "anniversary [date] of the plan." Under the Price Flex Plan, certain services, such as Residential Call Waiting, Caller I.D., and Caller I.D. Deluxe are subject to a two-year freeze and then "the pricing rules in 7.B. (4) shall thereafter apply..." (Section 7.B. (3)). The ILECs requested clarification that, after the two-year freeze, a participating telephone company will apply the percentage caps in Section 7.B. (4) for the 3rd Plan year. **The Commission finds this clarification to be consistent with the intent of the Plan and thus gives its approval of said clarification.**

(b) The Price Flex Plan allows ILECs to elect, on an annual basis, whether to move from the Price Cap Plan to the Price Flexibility Plan. The ILECs requested clarification that the time sensitive price caps, such as the two-year freeze on 1FR rates and subsequent rate increase "windows", are to be calculated from the effective date of the Order rather than the year of an individual ILEC's election. Alternatively, the ILECs requested that the time periods begin to run from the date an ILEC filed a calling plans meeting the Price Flex Plan requirements, regardless of whether such filings were made while the ILEC was regulated under such plan.

The Commission believes that the public interest is best served by linking the time periods in question to an ILEC's roll out of the required area calling plan. Accordingly, the time periods herein under scrutiny shall run from the date of adoption of the Commission's December 27, 2004 ATRP order only if an electing ILEC files a tariff implementing the required area calling plan by September 1, 2005, or has previously obtained approval of a qualifying plan. Otherwise, the time periods shall begin to run from the date of such a tariff filing.

2. Tier Designations and Wire Center Assignments.

The Price Flexibility Plan states that an "ILEC's service territory shall first be divided into geographical affiliations based on Metropolitan Statistical Areas (MSAs)" and identifies the counties located in Tier I and Tier II MSAs. (Price Flex Plan, 3.) In the same section, the Order states that an "ILEC shall request assignment of wire centers and provide justification for the proposed assignment" and that "the Commission... will determine the initial classification of wire centers to each of the competitive Tiers."

The ILECs sought clarification regarding the timetable and process that will be followed by the APSC in determining initial Tier assignments and seek a clarification that the same tier assignment should apply to all wire centers in an exchange. The ILECs noted that uncertainty regarding the Tier assignments made it difficult for a small ILEC to make an informed decision regarding its form of regulation. The ILECs first sought a clarification of this process in their January 26, 2005 Motion. The ILECs' again requested in their July 1, 2005 filing that the plan be modified to provide for an initial designation of all ILEC service areas as Tier II markets, subject to the right of an ILEC to provide evidence supporting a different designation.

The Commission agrees that additional clarity is needed regarding initial Tier designation but finds that such clarification cannot be provided prior to the August 31, 2005 deadline required for all ILECs to make an election as to whether they will

be subject to deregulation under the Telecommunications Reform Act of 2005 or remain under the ATRP as promulgated by the Commission. Accordingly, the Commission finds that ILECs seeking Tier II Designations for their wire centers may petition the Commission for such approval subject to the review of the staff and other interested parties including the Attorney General of Alabama. Determinations on such requests and the issue of whether the Tier designations apply to all wire centers in an exchange will be made by the Commission following public hearings. The Commission further finds that a proceeding to develop the definition of a wire center and to address the appropriateness of the Tier II caps set forth in Section 7 of the ILEC Price Flexibility Plan within the ATRP should go forward as soon as practicable.

3. Rural Interconnection Procedures.

Section I.A. of the Price Flexibility Plan provides that ILECs who elect to be regulated pursuant to that plan must “agree not to affirmatively assert the provisions of 47 U.S.C. § 251(f)(1)(A)-(C).” However, footnote 31 within said plan clarifies that ILECs are not precluded “from petitioning the Commission for a finding that any bona fide request for resale, interconnection, collocation or unbundled access is unduly economically burdensome, technically infeasible or inconsistent with 47 U.S.C. § 254. Any rural ILEC submitting such a petition will, however, have the burden of proving the merits of the petition.” The ILECs sought deletion of the waiver requirement in Section I.A, pointing out that it is often impossible for an ILEC to determine, at the time of receipt of an interconnection request, the extent to which the rural exemption is implicated.

The Commission finds that the ILECs’ request to delete the provisions of Section I.A. of the Price Flexibility Plan providing that a participating ILEC must “agree not to affirmatively assert the provisions of 47 U.S.C. § 251(f)(1)(A)-(C)” in order to be regulated under the Price Flex Plan is due to be granted. The Telecommunications Reform Act of

2005 essentially allows all ILECs that elect to be deregulated thereunder and maintain their rural exemption regardless of that election. Accordingly, all Rural ILECs who elect to be regulated pursuant to the ATRP should be allowed to retain their rural exemption as granted pursuant to 47 U.S.C. § 251(f)(1)(A)-(C).


IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the ILECs' Motion for Clarification and/or Reconsideration is hereby granted to the extent provided herein, and the Price Flexibility Plan is amended accordingly. The ILECs' Motion is denied in all other respects.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this matter is hereby retained by the Commission for any further orders deemed just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 25th the day of August, 2005.

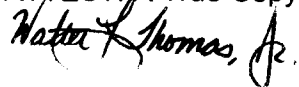
ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary

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APPENDIX "A"

Ardmore Telephone Company, Inc.
Blountsville Telephone Company
Butler Telephone Company, Inc.
Brindlee Mountain Telephone Company
Farmers Telephone Cooperative, Inc.
GTC, Inc. d/b/a GT Com
Graceba Total Communications, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Co., Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone of Alabama, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company, Inc.
Otelco Telephone, LLC. (formerly
Oneonta Telephone Company, Inc.)
Peoples Telephone Company, Inc.
Pine Belt Telephone Company, Inc.
Ragland Telephone Company, Inc.
Roanoke Telephone Company, Inc.
Union Springs Telephone Company
Valley Telephone Company